

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 92 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BALDEVBHAI TRIBHOVAN

Versus

HEIRS & L.R. OF SHETH GULABCHAND SHANTILAL &

Appearance:

MR KV SHELAT for Petitioner

MR BD KARIA for Respondents

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 19/06/2000

ORAL JUDGEMENT

Rule. Service of rule is waived by Shri
B.D.Karia, the learned advocate appearing for and on
behalf of the revision-opponents. At the request of both
the parties, this matter is taken up for final hearing
today.

2. I have heard the learned advocates of both the parties. I have gone through the papers produced in this matter. Shri K.V.Shelat, the learned advocate for the revision-opponents has produced certified copies of Exs.7 and 127 which were submitted by defendant/tenant in Regular Civil Suit No. 125 of 1986 before the trial court. They are taken on record.

3. Revision-petitioner who was defendant/tenant has filed this Civil Revision Application challenging the legality and propriety of order dt. 30th November, 1999 passed by Joint Civil Judge (J.D.) at Dhangadhra below application Ex.106 in Regular Civil Suit No. 125 of 1986 which is still pending on the file of his court. By Ex.106, defendant requested the trial court to open the right to file written statement which was, as alleged by him, closed earlier. As per the order challenged in this Civil Revision Application, learned trial Judge has observed that defendants' right to lead evidence had already been closed earlier on 08-01-1998 and further that right to file written statement had been closed on 21-12-1987.

4. Shri Shelat, the learned advocate for the revision-petitioner has produced the certified copy of Ex.7 dt. 21st December, 1987 which was signed by the defendant in the trial court. The trial court passed only order of "recorded" below that Exh. 7. The trial court has neither rejected nor granted that application Ex.7. Shri Karia, the learned advocate for the revision-opponents has argued that looking to Rojkam, it appears that it is mentioned in it that in the suit, "right to file written statement has already been closed". From the Rojkam, one can know only the events which took place on that date in the suit. Only mentioning in the Rojkam that "right to file written statement is closed ", cannot be said to be a judicial order, as no reasons are assigned in the form of order, and therefore, that application Ex.7 is still pending before the trial court which is required to be decided on merits. As the learned trial Judge has passed the only order of "recorded", it cannot be said that application Ex.7 is finally decided, and therefore, the fact that learned trial Judge has mentioned in his order that " right to file written statement was already closed on 21st December, 1987, is quite contrary to record, and therefore, the observation with regard to closure of right to file written statement, is bad in law and perverse.

5. I am of the opinion that the order below application Ex.106 is required to be set aside. The learned trial Judge, in his order, has stated that on 8th January, 1998, right to lead evidence for defendants was closed, but it appears that the learned trial Judge has not passed any speaking and judicial order. As stated by Mr. Shelat, on 8th January, 1998, the defendant had submitted application Ex.67 and on that day, learned trial Judge has granted time, on condition, to the defendant to lead his evidence, and therefore, his observation with regard to the order passed on 8th January, 1998 is also contrary to the order passed below Ex.67.

6. Thus, it appears from the record that order below application Ex. 106 which is challenged in this Civil Revision Application is contrary to application Ex.7 and 67. Admittedly, the suit is very old and it is on the final stage of trial. Defendant has sought the legal aid from the Gujarat State Legal Aid Board. Services of Shri N.V.Lakhatariya, the learned advocate are spared for the defendants. No doubt, suit is very much old because it is of the year 1986, but from the record, it appears that defendants are not given reasonable opportunity of being heard as his application Ex.7 is still pending and is required to be decided by the trial court on merits. Likewise, his application Ex. 127 is also required to be decided on merits by the trial court. Prima facie, it appears that order which is under challenge, is not in accordance with law, and therefore, I am of the opinion that this Civil Revision Application deserves to be allowed and is accordingly allowed, and the order dt. 30th November, 1999 below application Ex.106 in Regular Civil Suit No. 125 of 1986 pending on the file of learned Joint Civil Judge (J.D.), Dhangadhra is set aside with the following directions to the trial court :

(1) The learned trial Judge is directed to decide applications Ex.7 and 127 which are still pending in the suit on merits, after affording full opportunity of being heard to both the parties in accordance with law.

(2) The learned trial Judge is further directed to dispose of the suit on merits, in accordance with law after affording full opportunity of hearing and leading evidence, by both the parties latest before 31st July, 2000.

(3) As the learned advocates of both the parties have given assurance to this court that both the parties will give full co-operation in proceeding of the suit before

the trial court, and therefore, it is expected that both the parties shall appear before the trial court and take active and effective part at every stage of the suit in conducting the suit before the trial court, so that trial court can finally dispose of Regular Civil Suit No. 125 of 1986, latest before 31st July, 2000.

With the aforesaid observations and directions, this Civil Revision Application is finally disposed of accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.

Copy of this order be sent to trial court without any delay.

Date: 19/6/2000. (H.H.MEHTA, J.)

ccshah